

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 18 2002

In the matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Lebanon and Speedway, Indiana)

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MB Docket No. 02-143
RM-10392

REPORT AND ORDER
(Proceeding Terminated)

Adopted: December 13, 2002

Released: December 16, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rulemaking*¹ issued at the request of Radio One of Indiana, LLC ("petitioner"), licensee of Station WYJZ(FM) Channel 265A, Lebanon, Indiana, proposing to reallocate Channel 265A from Lebanon, Indiana, to Speedway, Indiana, and modify the license of Station WYJZ(FM) to reflect the changes. Petitioner filed comments, reiterating its intention to file the necessary application to effectuate the changes, if granted. No other comments were filed.

2. Petitioner filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the **Commission's** Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² In this case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal such as this, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.³

3. We will grant the change of community because it will serve the public interest. It will provide Speedway, Indiana, population 12,881 persons, with its first local aural transmission service, triggering Priority 3. By way of comparison, retaining the station in Lebanon would invoke Priority 4 as a second local service. Further, adoption of this proposal will not deprive Lebanon of local aural transmission service. Lebanon will retain service from noncommercial educational Station WIRE(FM) which is licensed to Lebanon.⁴

¹ See *Lebanon and Speedway, Indiana*, DA 02-1413, 17 FCC Rcd 11,142 (Med. Bur. 2002).

² See *Change of Community Report and Order*, 4 FCC Rcd 4870 (1989). *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

³ The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. See *Second Report and Order* in BC Docket 80-130 ("Revision of FM Assignment Policies and Procedures"), 90 FCC2d 88. 91 (1982).

⁴ Noncommercial educational Station WIRE(FM) provides a city-grade signal to all of Lebanon

4. In finding that Speedway is entitled to a first local aural transmission service, we have determined that Speedway qualifies as an independent community, pursuant to an analysis using the factors delineated in *Faye and Richard Tuck* (“*Tuck*”).⁵ We note that although Speedway does not meet all eight *Tuck* factors, it meets a majority, and thus Commission precedent favors a finding of independence.⁶ Petitioner has shown that there are many large employers in Speedway and that there are adequate opportunities for community residents to be employed in the community. Although it was unable to obtain exact data from some of these companies to determine the place of residence of their workers, it appears that there are sufficient opportunities for employment in the community to alleviate any concerns that Speedway might be dependent on the urbanized area for employment of its residents. There are two weekly newspapers published in the community that directly address community needs. For 46 years, Speedway, an incorporated city, was a completely separate, autonomous town adjacent to Indianapolis. Since 1969-1970, Speedway became an “excluded city” within the consolidated structure of Indianapolis, which means that its citizens vote for Indianapolis mayor, city council members who represent them, and at-large county councilors. Speedway retains its own municipal powers and elected governing bodies, such as town mayor, town clerk/treasurer, and town council. It retains the right to levy taxes to support itself, and has a town zoning board. Speedway does not have its own telephone directory, but the local telephone company provides Speedway listings in a regional directory of Western Indianapolis suburbs which do not include Indianapolis. Speedway has a zip code and post office branch, but it shares its zip code with some Indianapolis residents. There are numerous businesses, medical establishments, churches and community service organizations in Speedway. There is some evidence that the Speedway market is a separate advertising market from the larger metropolitan area because the regional telephone directory and the local papers include listings for Speedway businesses, who also advertise separately in the Indianapolis telephone book and papers. Speedway has its own police department, fire department, waterworks and wastewater plant, street department, public library, parks and recreation, and school district.

5. In addition, this proposal will serve the public interest because it will allow Station WYJZ(FM), currently operating as a short-spaced Class **A** facility using a directional antenna, to operate as a fully-spaced Class **A** station and will eliminate two existing short-spacings between Station WYJZ(FM) and Station WMGI(FM), Channel **264B**, Terre Haute, Indiana, and Station WWKI(FM), Channel **263B Kokomo**, Indiana. This is consistent with Commission policy of reducing or eliminating existing short-spacings.⁷ We also believe that despite the resulting loss of service to 35,000 persons, this proposal will serve the public interest because the entire gain area will serve 425,000 persons and thus there will be a net gain of service to 390,000 persons. In addition, the entire loss area will continue to receive service from at least 13 and as many as 25 other existing **AM** and FM stations.

⁵ These factors are: 1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community’s local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; 5) whether the smaller community has a telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified community and the central city are part of the same advertising market; 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. 3 FCC Rcd 5375 (1988).

⁶ See e.g., *Cumberland, Kentucky and Weber City, et al., Virginia*, 17 FCC Rcd 5024 (MMB 2002); *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (MMB 2001).

⁷ See *Eatonstown, Point Pleasant and Red Bank, New Jersey*, 1 FCC 2d (1965); *Albemarle and Indian Trail, North Carolina*, 14 FCC Rcd 10524 (1999); *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992).

6. An engineering analysis has determined that Channel 265A can be allotted at Speedway at petitioner's requested site 4.9 kilometers (3.0 miles) southeast of the community.⁸

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective January 30, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, **IS AMENDED**, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel</u>
Lebanon, Indiana	---
Speedway, Indiana	265A

8. IT **IS ORDERED** That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this **Order** to the following:

J. Richard Carr, Esq.
5528 Trent Street
Chevy Chase, MD 20815

9. IT **IS FURTHER ORDERED** That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Radio One of Indiana, LLC, licensee of Station WYJZ(FM), Lebanon, Indiana, IS MODIFIED to specify operation at Speedway, Indiana, subject to the following conditions:

- a) Within 90 days of the effective date of this **Order**, each licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the upgrade. As a result of this proceeding, Radio One of Indiana, LLC is required to submit rule making fees in addition to the fees required for the applications to effect the change of community for Station WYJZ(FM).

⁸ Coordinates for Channel 265A at Speedway are NL 39-46-10 and WL 86-13-45.

11. For further information concerning this proceeding, contact Victoria M. McCauley Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau